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# MILITARY SERVICE

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## AN ADDRESS

DELIVERED

BEFORE THE YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF HONOLULU, HAWAII, ON JANUARY 7, 1916  
RELATIVE TO THE LEGAL OBLIGA-  
TION OF THE CITIZEN

BY

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AN ADDRESS DELIVERED BEFORE THE Y. M. C. A. OF HONOLULU, HAWAII, JANUARY 7, 1916.

By HON. SANFORD B. DOLE.

Let me, in opening this subject, quote briefly from the Constitution and Statutes of the United States.

## CONSTITUTION.

ARTICLE 1. SEC. 8. The Congress shall have power to \* \* \* provide for the common defense; \* \* \* to raise and support armies; \* \* \* to provide and maintain a navy; \* \* \* to make rules for the Government and regulation of the land and naval forces; to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

ART. 2 OF AMENDMENTS. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. 3 OF AMENDMENTS. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

## REVISED STATUTES.

SEC. 1625. Every able-bodied male citizen of the respective States, resident therein, who is of the age of eighteen years, and under the age of forty-five years shall be enrolled in the militia.

SEC. 1642. Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States most convenient to the place of danger or scene of action, as he may deem necessary to repel such invasion or to suppress such rebellion and to issue his orders for that purpose to such officers of the militia as he may think proper.

SEC. 1644. The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

Let me quote further from Secretary Garrison's recent report to the President upon the necessity of increasing the national military power for the resistance of possible attacks from other nations:

The necessity of a nation having force commensurate with its responsibility is demonstrated by every correct process of reasoning founded upon fact. This is so whether the subject is considered in the light of the philosophy of government or of history. The use of force is the inherent essence of government. The very term itself is explicit—government—the right or power to compel obedience to law. When there is no force to compel such obedience—that is, to govern—there is anarchy. Individuals give up the right of unregulated action when they form themselves into or become subject to a government. The progress and advancement of that which is summed up in the word "civilization" have been made possible solely because of government. Unless the individual is secure in his person and his property, he has

neither time nor inclination to devote himself to the cultivation of the mental, moral, or spiritual side of his nature. That security is assured to him by government, and government can only meet its responsibility of assurance by the possession of sufficient force to secure and preserve it.

The constitutional grant of power to Congress to provide for the common defense and to raise and maintain armies and provide a navy therefor was a matter of course. This inherent power of the State in the matter of the common defense had to be in the hands of some division of the Government, and what so obviously appropriate for its exercise in a republican Government as its legislative authority?

After this constitutional recognition of the right and duty of the State to provide for the common defense, the most important legislation bearing on the subject is to be found in section 1625 of the Revised Statutes of the United States, quoted above, but which I will repeat:

Every able-bodied male citizen of the respective States, resident therein, who is of the age of eighteen years, and under the age of forty-five years, shall be enrolled in the militia.

Given the right and duty of national self-defense, upon whom does the burden fall? Upon a class of citizens, those, for instance, who may be wage earners, those who may be unprofessional men, the bachelors, perhaps. This is a republican government, founded upon the equality of its citizens in rights and privileges. No aristocracy in the ordinary meaning of the word is possible within its boundaries; there is no privileged class; the laws recognize none. The words "every able-bodied male citizen" are simple and clear; they need no construction. No exception to them can be devised which would be legal. The able-bodied man between 18 and 45 years of age is proclaimed by this statute to be one of the defenders of the United States, and this regardless of his status as to material prosperity, as to business engagements, as to professional duties. He may be a busy surgeon, a distinguished lawyer, a clergyman, a mechanic, a day laborer barely supporting his family by his wages, a luxurious billionaire with his motor cars, his army of servants, his city and country houses and estates, it makes no difference; one and all, they are the rank and file of the army of defense, which, or any part of which, could be called into service by the President at any time when threatened invasion or insurrection justified such action. The law provided for no excuses. A citizen who was sick, referring to chronic ailments, was not excused; he had simply ceased to be able-bodied, and so was not within the law. The official was already at work serving the country and might be regarded in war time as essential to the efficiency of the army. The same thing may be said of an occasional physician or surgeon, whose public service at home might be more important than his presence in the army—serving the public as a physician being akin to serving the State. Wealth conferred no privileges under this law; the rich man could not buy his release from military service as a member of the militia, and he could be punished for refusing to respond to the call of the President (sec. 1649 of the Revised Statutes).

During the Civil War it became necessary to put this statute in force, and a new act was passed in 1863 which affirmed the earlier law in the main but carried it further in its application, making it

include, in addition to able-bodied citizens, such able-bodied foreigners who have declared on oath their intention to become citizens, and the age limit was changed to include those between the ages of 20 and 45, instead of 18 and 45, as before.

Some exceptions to liability for service were made, which were:

The Vice President of the United States, the heads of the various executive departments of the Government, and the governors of the several States; the only son liable to military duty of a widow dependent upon his labor for support; the only son of aged or infirm parent or parents dependent upon his labor for support. Where there are two or more sons of aged or infirm parents subject to draft, the father, or, if he be dead, the mother, may elect which son shall be exempt; the only brother of children not 12 years old, having neither father nor mother dependent upon his labor for support; the father of motherless children under 12 years of age dependent upon his labor for support. Where there are father and sons in the same family and household, and two of them are in the military service of the United States as noncommissioned officers, musicians, or privates, the residue of such family and household, not exceeding two, shall be exempt.

The enrollment was made by officers whose duty it was to make lists of all persons subject to military duty. As men were needed for the Army, the enrolling officers were required to draft from such lists of names, probably by lot, the required number according to the order of the President for each enrolling district. The men so drawn were to be notified thereof, within 10 days, to appear at a designated rendezvous to report for duty.

The individuals so drafted were allowed to furnish substitutes, the acceptance of whom by the military authorities exempted those furnishing them. Those also who paid \$300 for procuring a substitute were exempted.

This statute was further revised in 1864-65, but the main principle remained untouched—the authority of the Government to require military service from all of its able-bodied male citizens, with exceptions as to officials and those foreigners who have taken the first step toward becoming citizens. The new legislation made some restrictions on the exemption granted to those who furnished substitutes; limiting their exemptions from liability to military service to the period of enlistment of their respective substitutes.

This American legislation, recognizing the liability of able-bodied male citizens to serve the country as soldiers whenever necessity required, and providing methods for compelling such service, was no new thing in history. The principle and practice came to us direct from the mother country, where for many centuries it has been recognized and carried out in the conduct of public affairs.

The development of the principle of universal service in time of stress is interesting, and, whatever changes may have taken place in details, the continuity of the principle is persistent. The landfyrd was the ancient militia of the shires, settled by the body that had its origin in the folk-moot or village meeting of free men, whose representatives attended the meeting of the mark, the gemot of the shire, or the witanagemot of assembly of the wise men of the tribe, division, or kingdom. These communities were ruled by leaders elected by the people. The body so elected was charged with the duty of protecting the community, for which purpose they were invested with the power to compel the attendance of every man in the defense of the country. (Compulsory Service, Blake, Nineteenth Century, October, 1915, p. 803.)

It is obvious that the right of a government to exact military service from its able-bodied men for purposes of defense from outward attack and internal disaffection is inherent to the maintenance of civil government under world conditions as they now exist and have existed ever since the development of governments. But it has not always been regarded as necessary to use this power. The patriotism of some national populations has been sufficient in many cases for the public protection. With a small standing army as a nucleus for the development of a larger army through the addition of volunteers actuated by patriotism, very considerable nations have felt secure. The weakness of such a situation was shown in the United States when, after conducting the war against the Confederate States for a considerable period, by its small Regular Army and its large force of Volunteers, it became necessary to resort to the draft. A somewhat similar difficulty is now confronting England in the present European war, in which the necessity of compelling military service is apparent should the duration of the war be greatly extended. Such governments are handicapped in case of war, requiring large reinforcements to their standing armies, inasmuch as volunteers usually require military training for months before they can be trusted to meet veteran troops, and even then they are at some disadvantage as compared with those who have had the benefit of severe and long-continued experience in camp and on the field.

It may be said in favor of compulsory service that it is fair: whereas the system of voluntary enlistment places the burden of fighting upon that fine element of citizenship that stands ready at the call of danger to promptly respond. After making due allowance for the probably correct diagnosis that this response is largely from young men and is due partly to the exuberant impetuosity of youth as well as to patriotism, it yet is true that this element largely represents the nation's manhood at its best; and it follows that such a system tends, through the fatalities of war, to reduce, unduly and disproportionately, this most valuable asset of the body politic.

If it is the inherent right of governments to compel military service, it follows that it is the duty of the citizen to respond cheerfully to the demand. It is not only his duty but it is his privilege; a privilege from which those unfortunate persons who have been convicted of a felony are excluded by statute in the United States, and it follows further that, with this vast power over the freedom of the citizens, the responsibility is upon the government to see to it that the citizen shall not be called out to exercise the duties of a soldier in any cause that is not a just and honorable one. Congress is given the power by the Constitution to raise armies and provide navies for the common defense from invasion from without and insurrections from within. It is also given the "power \* \* \* to declare war," and from this brief sentence the Supreme Court of the United States has announced in its decision in the case of the American Insurance Co. v. Canter (26 U. S., 388, 411), that "the Constitution confers absolutely on the Government of the Union, the power of making war and of making treaties; consequently that Government possesses the power of acquiring territory, either by conquest or by treaty."

Inasmuch as that case was concerned with the rights of property under the new territorial government of Florida, which had just been peacefully ceded to the United States under a treaty of sale and



purchase, the declaration that the Government of the United States possesses the power of acquiring territory by conquest, may be set aside as an obiter dictum, that is an opinion of a judge expressed by the way or in passing, and not upon the point in question before him. If we may construe these words, "power to declare war," by the context, we find that they are preceded by the words, "provide for the common defense," and immediately followed by the provisions granting powers "to raise armies" and "provide \* \* \* a navy," and make rules for the government of the land and naval forces and calling out the militia, for what? Not for wars of conquest, but "to execute the laws of the Union, suppress insurrections, and repel invasions." Does not the context limit the power to declare war to such circumstances that make war necessary to execute the laws of the Union, suppress insurrections, and repel invasions, and to those alone?

These references are all to be found in the eighth section of Article I of the Constitution and are included in a single paragraph. I find no authority in the Constitution giving to Congress or to any other division of the United States Government power to inaugurate a war of conquest; and the only justification for an invasion of the territory of a foreign power which can arise is when such invasion becomes necessary pending a war of defense against such power, as a strategic operation for the defense and safety of the United States.

It has been necessary for me thus to discuss the authority of the United States in the matter of levying war in order to deal more clearly with the obligations of the citizen when called upon by the Government of the United States to assume the duties of a soldier in actual war. We hear now and then the expression confidently and patriotically uttered, "My country, right or wrong." If this is intended to mean that a citizen should indorse and support any measure or policy of his government which may be founded upon unjust or vicious principles, as, for instance, one inaugurating a war of conquest pure and simple, then the adage is radically and ethically defective, and no citizen is bound to respond to it. In the forum of conscience there exists a jurisdiction that is paramount to all other authorities, and no one need listen to the voice which would call upon him to be disloyal to its sanctions.

The Government of the United States is republican in its system and democratic in its spirit. Its foundation principles are ideal. It was a step in advance of all precedents. Let us read the preamble to its Constitution:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

We do not find here a word of jealousy of other nations, not a word of hostility to other governments; there are no phrases which by any possibility can be found to conceal an inclination for conquest or interference in the private affairs of other communities. The United States is organized for the common good of its citizens; it is literally a commonwealth. The blessings of freedom and security which it provides, logically makes clear the duty of the citizen to support it in its enterprises for the maintenance of such blessings.

This conclusion raises incidentally the difficult question as to the reasonable treatment of Quakers and others to whom the doctrine of nonresistance is regarded as a moral principle to be observed at all costs. These people have made the Government of the United States considerable trouble at one time and another from their refusal to perform their share of the hazardous work of supporting their Government as soldiers. My impression is that this sentiment is dying out. Let us hope that this is the case for their own credit, for surely it is a thing to be taken for granted that those men who are imbued with the principles of good citizenship would be unwilling to accept and enjoy the great assets of freedom and security which have been gained through great personal sacrifices of others, and then stand aside when these assets are assailed and leave it to others to defend and protect them at their personal risk. Probably the trouble with these people is that they have made the mistake of adopting the idea of nonresistance as a moral principle instead of making it a rule of practice as a policy, which it really is; for certainly there are or might be occasions when one who has conscientiously adopted the doctrine of nonresistance would, if there was the average manhood in his make-up, throw the theory of nonresistance to the winds, and assert his real self; and would be morally justified in so doing.

If these conclusions are correct, it follows that the practice of nonresistance as a moral principle is defective and that no citizen has the right to say that he will enjoy the protection of his government, but will decline to aid that government in the maintenance of its sway. The relation between a government and its citizens is a contract, and the refusal of a citizen to perform the obvious duties on his side is a breach of contract and should tend to weaken the force of the obligations of the government toward such citizen. There is an exception, however, made to the rule of universal obligation on the part of citizens to respond to the call of the Government to military service; and this is to be found in the proviso set forth in section 2 of an act of Congress approved January 21, 1903 (32 Stat., 775), which is as follows:

*Provided*, That nothing in this act shall be construed to require or compel any member of any well-recognized religious sect or organization at present organized and existing whose creed forbids its members to participate in war in any form, and whose religious convictions are against war or participation therein, in accordance with the creed of said religious organization, to serve in the militia or any other armed or volunteer force under the jurisdiction and authority of the United States.

This provision only exempts members of existing religious organizations, whose creed and religious convictions are opposed to the participation in war by their members, from serving in the militia. It does not recognize the right of any citizen who is not a member of such an organization to refuse service on the ground of conscientious scruples against war. Nor does it recognize the right of exemption by the members of any religious organization opposed to war, which may be organized at any time after the passage of the said statute. This proviso is evidently a piece of thoughtless and good-natured legislation—a concession to certain religious ideas which are exceptional to the prevalent religious sentiment of the nation.

If such a concession is justifiable it should have been carried out to the logical conclusion, which surely is that the men whose principles will not allow them to fight for the support of their government, are

defective as citizens and should be so recognized by being deprived of the franchise, or some equally important element of public service, or privilege of citizenship.

To prevent confusion as to the rights of the citizen when called to arms for national defense, and when called to arms for a war of conquest pure and simple let me repeat briefly the standpoint of the citizen as affected by these two widely different demands from his government.

In the one case, the call to arms for national defense: This is a call to duty of the highest character which all able-bodied, intelligent, normal, and patriotic citizens should respond to as a matter of course. If they do not, from religious scruples, which is their right, or from any other reason, they are not entitled to all the rights, powers, and privileges of citizenship. The call to arms for a war of conquest: As there is no provision in the Constitution authorizing such a war, the United States Government has no authority for compelling military service therefor; consequently the citizen is justified in refusing to serve in such a war, should the demand be made upon him.







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